

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S BRIEF
AND
APPENDIX**

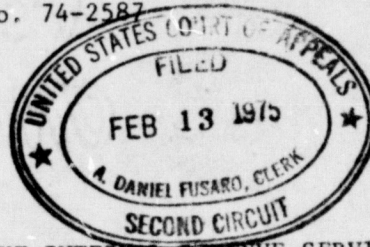
B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

4

UNITED STATES OF AMERICA)
)
Appellee)
)
versus)
)
PETER TERZIAN)
Appellant)
)

Docket No. 74-2587



APPEAL OF DENIAL OF A MOTION TO RESTRAIN THE INTERNAL REVENUE SERVICE

BRIEF AND APPENDIX

STATEMENT OF THE CASE

Appellant was indicted by a grand jury on four counts of violation of Title 26, United States Code, Section 7201 (income tax evasion.)

May 15, 1972 - Appellant was arraigned in United States District Court, Albany, New York, and entered a plea of not guilty.

Sept. 18, 1972 - Appellant presented a Motion to Dismiss the charges on the grounds of unconstitutionality of progressive income taxation. This motion was denied by Judge James T. Foley by an Order signed Sept. 19, 1972.

April 2, 1973 - Appellant pleaded guilty to one count of violation of Title 26, as charged. The other three counts were dropped. Appellant was fined five thousand dollars (\$5000.00) and sentenced to six months in prison. A motion to stay execution pending appeal was denied. Appellant paid the fine under protest, and served the prison sentence.

April 11, 1973 - An appeal was filed with the United States Court of Appeals for the Second Circuit.

September 28, 1973 - The appeal was argued before the Court of Appeals and was denied.

October 1, 1973 - An appeal was filed with the United States Supreme Court.

1

PAGINATION AS IN ORIGINAL COPY

2
This appeal is pending as of December 31, 1974.

Dec. 27, 1973 - Notice of Deficiency concerning tax years 1965, 1966, 1967, and 1968 received from Internal Revenue Service.

March 26, 1974 - Petition filed with the United States Tax Court, as mandated by the Notice of Deficiency.

May 22, 1974 - Answer of the Commissioner of Internal Revenue served on Petitioner

July 12 and July 25, 1974 - Jeopardy assessments filed by the Internal Revenue Service in the office of the Clerk of Schenectady County, New York.

July 31, 1974 - Commissioner of Internal Revenue filed motion under rule 37 (c) for an Order that Undenied Allegations in Answer be deemed admitted (Received by Petitioner Sept. 2, 1974.)

August 30, 1974 - Notice of Jeopardy Assessment filed with Tax Court by Commissioner of Internal Revenue

Sept. 2, 1974 - Mailgram sent to Tax Court by Appellant regarding filing of Motion for Extension of Time to File Reply to Respondent's Answer.

Sept. 11, 1974 - Request for Extension to Time filed with Tax Court

Sept. 12, 1974 - Motion for Leave to File Reply Out of Time filed by Appellant with Tax Court

Sept. 12, 1974 - Reply to Answer of the Commissioner of Internal Revenue filed by Petitioner with Tax Court

Sept. 27, 1974 - Internal Revenue Service confiscates two (all) of Appellant's checking accounts at the Mohawk National Bank at 466 Ballston Road, Schenectady, New York. (Bank letter dated Oct. 1, 1974.)

Nov. 4, 1974 - Appellant petitions United States District Court in Albany, New York, for an Order to Cause the Internal Revenue Service to Cease and Desist in its actions to collect allegedly due taxes pending resolution of the Appeal to the Supreme Court. Motion was denied by Judge James T. Foley by an Order signed Nov. 8, 1974.

Dec. 2, 1974 - Internal Revenue Service confiscates payments due to the Appellant

3

from Blue Shield of Northeastern New York for medical services performed by the Appellant for his patients.

ARGUMENT

Point 1, - Action by the Executive Branch of the government prior to final adjudication of a case is irrational

The orderly process of government is well established by the Constitution of the United States, which authorizes a Legislative Branch (Article 1, Section 1), an Executive Branch (Article II, Section 1,) and a Judicial Branch (Article III, Section 1.) The due process of government clearly begins with the formulation of laws by Congress, the representatives of the people. The Executive Branch thereupon proceeds to enforce the laws. Disputes inevitably arise concerning the interpretation of the laws and the manner of enforcement thereof. These disputes are resolved by the judicial department of the government. Pending resolution of disagreements, the process of enforcement must necessarily be arrested.

The Statement of this Case notes that the original contest is still under appeal in the Supreme Court of the United States, in spite of which the Internal Revenue Service has proceeded to take drastic steps against the Appellant, confiscating his bank accounts and payments due to him from third parties.

Point 2 - The Internal Revenue Service violates its own rules of procedure

The Statement of the Case notes that a Notice of Deficiency was received by the Appellant, containing instructions that the Appellant was required to file a Petition with the United States Tax Court if Appellant disagreed with the determination of the Commissioner of Internal Revenue. Such a Petition was perforce filed by the Appellant within the ninety day interval provided

4
by law. As noted in the Statement of the Case, this Petition has not been answered as of December 31, 1974.

In addition, the Notice of Deficiency in its third paragraph (see underlining in attached copy of the Notice of Deficiency) contains the following statement, "However, if within the time stated you contest this determination by filing a petition with the United States Tax Court . . . we may not assess any deficiencies and bill you until after the Tax Court has decided your case."

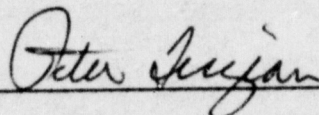
As of December 31, 1974, the United States Tax Court has not decided this case.

In spite of these facts the Internal Revenue Service has autonomously proceeded to levy assessments, confiscate bank accounts, and confiscate insurance payments due to the Appellant for his services, making it very difficult for the Appellant to conduct his business in an orderly manner, embarrassing the Appellant, and denigrating the professional standing of the Appellant in the community in which he lives.

Wherefore, Appellant hereby petitions the United States Court of Appeals for the Second Circuit to issue an Order to cause the Internal Revenue Service to Cease and Desist in its actions as noted above, to lift the assessments filed in the office of the clerk of Schenectady County, to restore Appellant's accounts in the Mohawk National Bank of Schenectady, to relieve the assessment filed with the Marcin Credit Exchange of 1985 Central Avenue, Albany, New York, 12205, and to relieve the Levy filed with Blue Shield of Northeastern New York, repaying in the process all confiscated monies.

In sum, Appellant prays that this Court will order the Internal Revenue Service to discontinue harassing the Appellant pending final adjudication of this cause.

Signed



Peter Terzian, pro se
1024 Tomahawk Trail
Scotia, New York 12302

Address any reply to:

P.O. Box 1387, Albany, N.Y. 12201
Department of the Treasury



District Director
Internal Revenue Service

Date: DEC 27 1973

In reply refer to:
AU:R:APT:mef

► Mr. Peter Terzian &
Mrs. Margaret Terzian
1024 Tomahawk Trail
Scotia, N.Y. 12302

Dear Mr. & Mrs. Terzian:

Tax Year Ended:	Deficiency:	Addition to Tax Sec. 6653(b)
12/31/65	\$12,811.92	\$6,405.96
12/31/66	\$17,132.17	\$8,566.09
12/31/67	\$17,436.82	\$8,718.41
12/31/68	\$17,104.62	\$8,552.31

This letter is a NOTICE OF DEFICIENCY—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours
Donald C. Alexander
Commissioner

By

John Zehnleuter
Acting District Director

Enclosures:
Statement
Waiver, Form 870
Envelope

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

v.

PETER TERZIAN,

Defendant

NO. 72-CB-103

O R D E R

This matter having come on for a hearing on November 4, 1974, on the motion of the defendant, Peter Terzian, for an order directing the United States of America to cease and desist from certain action that the said Peter Terzian alleges is disruptive of the conduct of his business, and the court having considered the pleadings and the oral argument of the parties, and the court being of the opinion that it has no jurisdiction to entertain the motion or to grant the relief requested, it is

ORDERED that the motion for order to cease and desist be, and the same is hereby denied.

DATED: November 8, 1974

15/ James T. Foley
United States District Judge

ONLY COPY AVAILABLE

Peter Terzian)
Petitioner)
)
)
versus)
)
Commissioner of Internal Revenue)
Respondent)

Docket No. 72 CR 103

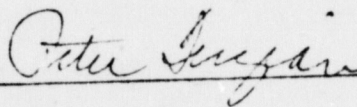
MOTION FOR ORDER TO CEASE AND DESIST

11/4/74 -
Assigned only
by Petitioner Dr
Tanzon & AUSA-J. J. J.
Mata sent under
J. J. J. 126 USC 7421,
7422 J. J. J. 4-303

- 1) Whereas the RESPONDENT has caused tax liens to be filed in the office of the County Clerk in Schenectady County against the PETITIONER on July 12, 1974 and on July 25, 1974, for alleged deficiencies in payment of income taxes, and
- 2) Whereas the RESPONDENT has caused a NOTICE OF LEVY to be transmitted the Mohawk National Bank at 466 Ballston Road, Schenectady, New York 12302 on Sept. 27, 1974, causing the management of said bank to remit the contents of two (all) of PETITIONER'S CHECKING ACCOUNTS to the RESPONDENT, thus effectively closing both of PETITIONER'S checking accounts and making it impossible for PETITIONER to conduct business and pay his creditors by use of said accounts, and
- 3) Whereas PETITIONER presently has litigation in progress in the United States Tax Court in Washington, D.C., under Docket No. 2101-74, in which PETITIONER is praying that the Tax Court will defer action or dismiss the case brought by the RESPONDENT in regard to alleged deficiencies in payment of income taxes by the PETITIONER, and
- 4) Whereas the PETITIONER also has litigation under consideration by the Supreme Court of the United States under Docket No. 72 CR 103, in regard to the unconstitutionality of progressive income taxation, the appeal having been filed in the office of the clerk of the United States District Court, Northern District of New York, Utica, New York, on October 5, 1973, and the Index to the Record on Appeal having been transmitted to the United States Supreme Court on Nov. 8, 1973, and
- 5) Whereas the actions by the RESPONDENT noted in paragraphs 1) and 2) above are premature and seriously disrupt the conduct of business by the PETITIONER,

AND ARE DETRIMENTAL to PETITIONER'S professional standing in the community in which he practices his profession,
THEREFORE Petitioner prays that the court will issue an order to cause RESPONDENT to CEASE AND DESIST in his actions which disrupt the conduct of PETITIONER'S business, pending the outcome of litigation noted in paragraphs 3) and 4) above, and also issue an order that PETITIONER'S checking accounts in the Mohawk National Bank be reinstated.

signed



Peter Terzian
12 Whispering Hills
Elnora, New York 12065
pro se

Copy to: Office of United States Attorney
United States Post Office and Federal Building
Broadway
Albany, New York 12201

Barbara Herdman, Revenue Officer
Internal Revenue Service (Schenectady, New York)
c/o District Headquarters
855 Central Avenue
Albany, New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs

72-CR-103

PETER TERZIAN,

Defendant

Memorandum-Decision and Order

On September 21, 1972 the above-captioned case was on a calendar for trial. The court was advised that the defendant wished to withdraw a not guilty plea and enter a plea of guilty to count IV of the indictment.


The defendant was advised of his right to counsel but persisted in proceeding without counsel.

He has now filed "Notice of Claim of Mistrial" seeking to dismiss the charges against him on the ground that in taking the plea, the defendant was compelled to incriminate himself by answering a question put to him by me concerning the purpose of maintaining numerous bank accounts. In his application to dismiss the charge, he alleges that he answered that "the purpose was to conceal income." From the court's recollection of the plea proceedings, this is substantially correct. The question was put to the defendant in order that the court could comply with the requirement of Rule 11 F.R.Crim.P. that

"there is a factual basis for the plea."

While the purpose of the filing of this notice by the defendant is not clear, I will treat it as a motion to withdraw the plea of guilty, and it is

ORDERED, that the same be and it hereby is denied in all respects.


United States District Judge

Dated: November 28, 1972
Auburn, New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT NEW YORK

-----x

UNITED STATES OF AMERICA,

:

Plaintiff

:

v.

:

NO. 72-CR-103

PETER TERZIAN,

:

O R D E R

Defendant

-----x

This matter having come on for a hearing on November 4, 1974, on the motion of the defendant, Peter Terzian, for an order directing the United States of America to cease and desist from certain action that the said Peter Terzian alleges is disruptive of the conduct of his business, and the court having considered the pleadings and the oral argument of the parties, and the court being of the opinion that it has no jurisdiction to entertain the motion or to grant the relief requested, it is

ORDERED that the motion for order to cease and desist be, and the same is hereby denied.

DATED: November 8, 1974

James T. Foley
United States District Judge

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

72-CR 103

D. C. Form No. 100 Rev.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

C L O S E D

vs.

For U. S.:

Hon. James M. Sullivan, Jr.
Mumford

PETER TERZIAN
Scotia, NY
271 Saratoga Rd

Resides: 1024 Tomahawk Trail

For Defendant:

Desires no attorney

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
4/2 \$5,000.		1973			
J.S. 2 mailed	Clerk	Apr. 11	Peter Terzian	5 00	
		" 13	Dep. Cr. Tr. U.S.		5 00
J.S. 3 mailed	Marshal	6/1/73	Terzian	5000	
		6/5/73	Cr Tr US		5000
Violation	<i>Adm</i> Docket fee	11/11/74	Terzian	5.00	
		11/12	Cr. Tr. U.S.		5.00
Title					
Sec.					

PROCEEDINGS

1972
Mar 28 ✓ Filed Indictment-26:7201-filing false income tax returns 4 cts
May 16 ✓ Filed waiver of counsel
✓ Filed bail form
May 15 Defendant is arraigned and pleads not guilty. 10 days to file motions against Indictment. Signed bail form. Released on own recognizance.
May 23 ✓ Filed motion to dismiss
Aug 3 ✓ Filed brief for defendant
Sept 18 ✓ Filed Memorandum of Law-Covt
Sept 18 Motion to dismiss-denied
Sept 20 ✓ Filed Judge Foley's order denying dismissing Indictment
Sept 21 Defendant withdraws plea of not guilty and pleads guilty to count four. Pre-sentence investigation ordered. Sentence deferred. Released on own recognizance
Nov 20 ✓ Filed Govt's notice of claim of mistrial-motion to withdraw plea of guilty
✓ Filed Judge Port's memorandum-decision and order denying motion to withdraw plea of guilty.
1973
Jan 22 Defendant withdraws plea of guilty and pleads Not Guilty. Continued on own recognizance. This case is to be placed on Feb 1st at 11:00
Feb 1 ✓ Filed Notice of appeal of Judge Port's denying Dismissal.

DATE	PROCEEDINGS
Feb 14, 73	Sent Certified Copy of Record on Appeal to CCA, Second Circuit
Mar 5	✓ Filed receipt of Court of Appeals of papers
Mar 19	Defendant withdraws plea of not guilty and pleads guilty to count four. Pre-sentence investigation ordered. Sentence deferred. Continued on own recognizance.
Mar 30	✓ Filed Court of Appeals decision dismissing appeal for lack of jurisdiction
Apr 2	The Court advised the defendant of his right to speak in his own behalf, defendant spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of six months on count four, and sentenced to pay a fine of \$5,000, and stand committed until paid. JTF S3 Counts 1,2,3 are dismissed, on motion of B Mumford, Asst US Atty. Remanded to custody of Marshal.
Apr 12	✓ Filed receipt from USCA-notifying papers to be filed on or before Mar 21, 1973
Apr 3	✓ Filed statement of debt to Judge
Apr 3	✓ Filed Judgment-2 copies Marshal's office
Apr 11	✓ Filed Notice of Appeal
Apr 12	Sent docket entries and copy of Notice of Appeal to A. Daniel Fusaro, copy of N&A to U. S. Attorney
Apr 18	✓ Filed Commitment, ex Apr 11, 1973-FPC, Allenwood, Pa
June 6	Sent Certified copy of Record on Appeal to CCA 2nd Cir.
June 7	Recd papers from Court of Appeals, -1st appeal
June 13	✓ Filed receipt of certified Index from Fusaro
July 30	✓ Filed copy of request for 5 days leave addressed to Judge Marjory Kaufman, of USCA
Aug. 13	✓ Filed Copy of Motion to Postpone oral argument in U.S.C.A.
Aug 16	✓ Filed decision of Circuit Court of Appeals to postpone oral argument.
Oct 5	✓ Filed cert copy of Judgment of CCA affirming decision
Oct 5	✓ Filed Notice of Appeal for Supreme Court, Sent copy to Supreme Court, notice was sent to Mumford ✓ Filed cert of mail of appeal to Mumford
Nov. 8	Sent Certified Copy of Record on Appeal to U. S. Supreme Court
Nov 16	✓ Filed receipt of Supreme Court for papers
Nov 21	Recd all papers from US Supreme Court
Oct. 7,	✓ Filed Motion for Order to Cease and Desist
11/15/74	✓ Filed Notice of Motion, returnable Nov. 4, 1974 at Albany
1/4/74	Motion for Order to Cease & Desist, by deft. - Motion denied. Gov't to submit order.
1/11/74	✓ Filed Notice of Appeal from judgment of denial of his Motion for an Order to Cease & Desist.
11/4	✓ Filed Affidavit signed by James E. Cullum, AUSA in opposition to defendant motion for an Order to Cease and Desist
11/12	✓ Filed Order denying motion to cease and desist